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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,695	02/12/2001	Terrence L. Graham	22727/04056	6144

24024 7590 08/26/2003

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CLEVELAND, OH 44114

EXAMINER
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PRYOR, ALTON NATHANIEL

ART.UNIT	PAPER NUMBER
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1616

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/781,695

Applicant(s)

GRAHAM ET AL.

Examiner

Alton N. Pryor

Art Unit

1616

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-43 is/are pending in the application.
- 4a) Of the above claim(s) 2-9, 13, 22 and 24-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 12, 14-17, 19-21 and 23 is/are rejected.
- 7) ☒ Claim(s) 11 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Mathur et al (Indian J. of Mycology and Plant Pathology, 1990, vol. 20 no. 2, pp.192-3). Mathur teaches a composition for controlling stripe disease infection in barley comprising 2,4-D. Mathur also teaches a composition for controlling stripe disease infection in barley comprising copper. Mathur teaches that the compositions are applied to barley plants. See abstract. It is inherent that the application of 2,4-D and Cu onto the barley plants would induce isoflavone production as well as induce disease resistance in the barley plant.

Claims 1,15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gillespie et al (WO 9817109; 4/30/98). Gillespie teaches a method of applying a composition comprising 2,4-D onto the foliage of a plant. Gillespie teaches that the composition can further comprise a diluent and/or pesticides such as herbicides and insecticides. See page 3 3<sup>rd</sup> full paragraph, page 4 3<sup>rd</sup> full paragraph, page 6 last full paragraph, page 8 lines 6-8. It is inherent that the application of the composition onto

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the plant foliage would induce production of isoflavone as well as induce disease resistance in the plant.

Claims 1,15,19,20 are rejected under 35 U.S.C. 102(b) as being anticipated by Chamblee et al (US 4274861; 6/23/81). Chamblee teaches a method of applying a composition comprising 2,4-D and alcohol (diluent) onto a soy bean plant. See abstract, claims 1,7. It is inherent that the application of the composition onto the plant foliage would induce production of isoflavone induce disease resistance in the plant.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12,14,21,23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mathur as applied to claim 1 above. See 35 USC 102(b) rejection above according to Mathur. Mathur teaches all that is recited by Mathur except for the method comprising a single composition comprising 2,4-D and copper. It would have been obvious the combine the two compositions taught by barley to form a single composition comprising 2,4-D and copper. One would have been motivated to do this in order to make the most effective composition controlling stripe infection in barley plants.

***Claim Objection***

Claims 11,18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the

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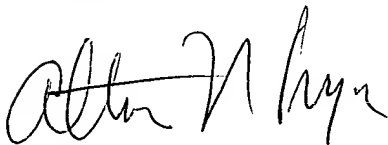
base claim and any intervening claims. The prior art does not teach or suggest the application of clofibric acid or ciprofibrate or cpmpha onto plants. The prior art does not teach the instant method comprising application of the composition onto seed or seedlings.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 703 308-4691. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1235.



Alton Pryor  
Patent Examiner  
AU 1616

**ALTON N. PRYOR**  
**PRIMARY EXAMINER**